IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WP(C).No. 29887 of 2006(G)

CMP.4710/2006 of C.J.M.,KOLLAM

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PETITIONER:

IBRAHIM KUNJU, S/O.MOIDEEN KUNJU,
S.R.N.COTTAGE, IRAKUZHI, KANJIRATHIL MOODU,
KADAKKAL, KOLLAM DISTRICT.

BY ADV. SRI.M.R.ANANDAKUTTAN
SMT.M.HEMALATHA
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN

RESPONDENTS:

STATE BANK OF TRAVANCORE,
TRIVANDRUM MAIN BRANCH, P.B.NO.22,
M.G.ROAD, THIRUVANANTHAPURAM.

BY ADV. SRI.R.SATHISH NINAN, SC, KHLWWB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.NO.29887 OF 2006

Dated this the 6th day of December, 2006.

JUDGMENT

Against the petitioner, steps have been initiated for taking over possession of secured properties before the learned Chief Judicial Magistrate under the provisions of Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The petitioner has come to this Court with this Writ Petition with three fold contentions. First of all it is contended that the Chief Judicial Magistrate does not have any jurisdiction under Section 14 of the Act. The question is squarely covered by the decision of this Court in **Solaris Systems Pvt. Ltd. v. Oriental Bank of Commerce** [2006(3) KLT 121]. That contention is now not available.

3. The next contention is that proceedings are pending before the Debts Recovery Tribunal and in these circumstances, pending such proceedings, attempt to recover the amount by resort to Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is not justified. This question also appears to be squarely covered by the decision of a Division Bench of this Court in

Sahir Shah v. Bank of India [2006(1) KLT 161]. The learned counsel for the respondent submits that steps have been initiated before the Debts Recovery Tribunal much after initiation of proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4. Thirdly and finally, a contention was raised on merits that the actual liability is far less than the liability which is now sought to be enforced by resort to Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Action under Section 13(4) of the said Act having already been initiated, the petitioner's remedy lies elsewhere and he has to approach the appellate authority under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The third contention also hence fails. In these circumstances, I find no merit in this Writ Petition.

5. This Writ Petition is, accordingly, dismissed.

R.BASANT
JUDGE

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